



CPUC Energy Division
Attention: Julie Fitch, Director
Cc: Paul Douglas, Sean Simon, Jaclyn Marks,
505 Van Ness Ave.
San Francisco, CA 94102

Subject: Recurrent Energy's Protest of Southern California Edison Advice Letter 2364-E,
*Request for Approval of Competitive Solicitation Process and Criteria for 250 Megawatts
of Southern California Edison's Solar Photovoltaic Program and Draft Standard Power
Purchase Agreement*

INTRODUCTION

Recurrent Energy (Recurrent) commends Southern California Edison (SCE) for what we believe is a constructive and helpful Advice Letter (AL), and a productive start toward a Standard Power Purchase Agreement (PPA) for its Solar Photovoltaic Program (SPVP). We support much of what SCE has proposed in both documents. Our purpose in submitting this response is to help streamline the process and strengthen the criteria for evaluating PPA offers, as well as to clarify the proposed PPA and address concerns raised at the July 31, 2009 Workshop.

Recurrent shares the Energy Division's goals of ensuring that SCE's PPA process –

1. selects the most viable projects and proponents, with the highest probability of success;
2. is as simple and transparent as possible, and minimizes transactions costs for all participants;
3. equitably allocates program and project risks between buyer and sellers;
4. encourages third-party development while reducing PV costs; and
5. facilitates projects that efficiently use SCE's distribution system.

The following comments on SCE's Advice Letter are intended to advance each of these goals. These comments highlight a few of the most important changes we recommend to the Draft PPA, but in the interest of brevity, the red-lined PPA included as Attachment A to this Protest, and the comparison matrix included as Attachment B, propose a number of other changes not discussed in the body of our comments. Both Attachments are incorporated here by reference.

I. SELECTING THE MOST VIABLE PROJECTS & PROPONENTS

California's RPS experience has taught that it is one thing to propose large renewable energy projects – and quite another to bring them to fruition. The success of SCE's pioneering PV PPA program will not be determined by how many proposals developers submit, or how many megawatts they propose. It will be measured by how many megawatts of PV projects are actually built and operated, and supply reliable, competitively-priced power to SCE's system and its customers over the next 20-25 years. The State, its regulators, and the stakeholders in SCE's Solar PV Program all stand to benefit only from timely, professional installation of well-designed PV projects and proven technologies, delivering reliable solar power for the duration of their PPAs.



Recurrent believes that the best way to ensure this outcome is to rigorously apply project viability criteria, including solid financial commitments and demonstrable site control, at the RFP response submission stage.

We and other experienced and reputable solar IPPs welcome this scrutiny, and we embrace the challenges it presents for our projects, our technologies and our industry.

In our view, SCE's Advice Letter correctly prioritizes project viability by requiring, as conforming criteria for short-listing PPA proposals, seller 'experience with large commercial and industrial roof-mounted PV installations', and 'commercially proven solar PV systems [using] UL-rated components'. (AL, p.7) We also agree with SCE that viability criteria can and should be applied using the Project Viability Calculator (PVC) developed by the Energy Division for RPS procurements, and we are comfortable with applying the Criteria Scoring Guidelines (PVC, Tab 3) to SPVP projects.

Recommendation 1: Increase the development security deposit in draft PPA §4.1 from \$20/kW to \$30/kW of Gross Power Rating. This is consistent with RPS and other utility solicitations, and will enhance project viability by further evidencing that successful proposers are willing and able to move projects forward.

II. PROVIDING SIMPLICITY & TRANSPARENCY, & MINIMIZING TRANSACTIONS COSTS

Project-Specific PPA Revisions. The Commission and the parties have recognized that the economics of PV projects in the size range targeted by SCE's program require relatively simple, straightforward procurement processes, including standard PPA terms and conditions to the greatest extent practicable. Developers who have built these projects, and utilities who have procured them, also recognize that megawatt-scale PV projects necessarily vary from one to another, so some flexibility may be needed to ensure a smooth contracting process.

The Advice Letter states that 'terms and conditions of the standard 20-year PPA are not intended to be subject to negotiation, although there may be situations that could warrant project-specific revisions.'¹ Recurrent believes that this strikes a reasonable balance between the need for simplicity, transparency and speed, on the one hand, and the reality that no two PV projects of this scale are identical.

The Commission's Tier 2 approval process, which SCE proposes and we support for these PPAs, is designed to expedite ministerial actions by Commission Staff. We recognize that Staff approval of PPA provisions that depart substantially from standard, pre-approved terms could exceed the authority conferred for Tier 2 approvals. At the same time, our experience is that parties to long-term, multifaceted agreements like these are rarely comfortable with each and every term of a standard-form agreement developed to cover a wide range of physical, business and regulatory situations, including some that cannot readily be foreseen months or years in advance of actual project development.

Recommendation 2: Adopt SCE'S formulation, and permit Tier 2 Staff approval of PPAs which may include non-standard provisions specific to an individual PV project that do not materially diminish its value to SCE customers over the life of the PPA. Examples might include modifications that accommodate exceptional local permitting requirements, or enable unique cost reduction opportunities.

¹ At page 3; similar language appears on page 8.



Multi-Round Selection Process. The Advice Letter (page 6) states that:

“SCE is also considering a multi-round selection process in this RFO. If SCE determines that it will use a multi-round selection process, offerors will be informed at the time of RFO launch, through the Procurement Protocol and RFO conference, on exactly how the process will operate. Absent implementation of a multi-round offer process, SCE will accept offers based on the initial binding price offer.”

At the July 31 Workshop, SCE explained that it was considering the possibility of a multi-round selection process based on input it had received from some bidders in its RPS and perhaps other large-scale generation procurements. Some developers may believe that a multi-round process can offer benefits for utility-scale generation solicitations. However, those who spoke at the July 31 workshop were virtually unanimous that adopting that approach for the SPVP would undermine the program goals of simplicity, transparency, efficiency and cost minimization. It could also encourage gaming on the part of some bidders, who might withhold their best and final offers until informed of early-round bidding results. Recurrent agrees that multi-round bidding as described by SCE would increase cost and complexity, introduce unnecessary delay, undermine transparency and invite gaming.

Recommendation 3: Adopt the strong consensus view expressed by prospective bidders at the workshop, and acknowledged there by SCE, that a multi-round selection process would be counterproductive for the SPVP. Eliminate that approach from further consideration and endorse SCE’s alternative of accepting proposals based on the initial binding price offer.

Additional Contract Terms for Projects Over 2 MW. The Advice Letter (page 7) states that SCE may require additional contract terms for projects over 2 MW. If SCE or other stakeholders can foresee a need for additional contract terms, defining those terms now as part of a standard ‘over 2 MW’ PPA would serve the interests of simplicity, transparency, predictability, and minimizing transactions costs. It would also help ensure that those PPAs could remain eligible for an expedited Tier 2 review process, instead of incurring the additional costs and delays of Tier 3 Commission approval before projects could deliver needed renewable power to SCE’s system.

Recommendation 4: Direct SCE, in consultation with the Energy Division and interested stakeholders, to promptly augment its standard PPA with any additional terms that it or other parties believe are likely to be needed for projects over 2 MW, so that those provisions can be incorporated into a Commission-approved standard agreement eligible for Tier 2 approvals. Also, implement **Recommendation 1**, above, for these ‘over 2 MW’ PPAs (perhaps with modifications appropriate to accommodate larger size projects).

III. EQUITABLY ALLOCATING RISKS BETWEEN BUYER & SELLERS

Most of Recurrent’s suggestions for advancing this goal are set forth in the red-lined version of the Draft PPA appended as Attachment A, and explained in Attachment B, our comparison matrix. However, one provision in SCE’s Draft PPA bears special emphasis here, as it did in the July 31 Workshop.

SCE Mandatory Buyout Option. This is SCE’s proposed Buyout Option (Draft PPA §10), which the Advice Letter acknowledges (page 9) was a ‘key change’ from its AB 1969 CREST agreement, on which the Commission directed the utility to model its Draft PPA here.² Like the multi-round selection process that SCE had been considering, its proposed Buyout Option drew unanimous opposition from all who addressed the subject at the July 31 Workshop. Some of the reasons for this opposition were:

² D.09-06-049, Ordering Paragraph 2, pp. 58-59.



- that the buyout provision could result in highly unfavorable IRS treatment for project developers, reducing or eliminating their ability to provide competitively-priced solar;
- that SCE's utility-owned PV projects would be subject to no such impairment, undermining the Commission's stated intent to fairly compare UOG and PPA projects;
- that a mandatory buyout would be unfair to PV project owners, who could expect additional years of service and ongoing revenues from these projects beyond the 20-year PPA term; and
- that the residual value of many IPP projects at the end of the PPA term would substantially exceed SCE's proposed fixed buyout price of \$100/MW_{DC}.

At the Workshop, SCE representatives graciously acknowledged that the proposed buyout provision appeared to be a non-starter, and indicated they would convey that message to utility management and, presumably, eliminate that provision from SCE's PPA proposal. We trust that this view will prevail, and that the adopted PPA will not force an unwise or inequitable buyout on solar IPPs or other project owners.

Recommendation 5: Delete all of draft Section 10 from the PPA.

IV. ENCOURAGING THIRD-PARTY DEVELOPMENT WHILE REDUCING PV COSTS

In general, Recurrent believes that the Commission's basic direction to incorporate competitive PV procurements into the SPVP, implemented through SCE's Advice Letter, will ensure progress toward this goal. Even without the \$260/MWh ceiling on third-party PV pricing, our experience is that strict viability criteria combined with robust competition among qualified projects, will encourage efficient and accomplished developers to participate, and will help drive down prices for PV electricity.

To succeed at this, solar IPPs must be encouraged and allowed to do what they do best: to bring myriad project elements together in efficient and innovative ways, tailored to the specific circumstances of each project. This requires some flexibility to craft projects differently from one locale to another, from one site to another, from one facility to another, and among different types of property owners that bring distinct needs to each project.

'One-Size-Fits-All' Requirements. For these reasons, Recurrent does have significant concern with elements of SCE's proposal that impose 'one-size-fits-all' requirements that could restrict developers' flexibility and limit their capacity to develop projects in areas or at facility sites that may offer particular value to SCE's system. These include proposed PPA provisions limiting hiring to particular professional license categories or requiring specific payment levels for contractors. Other PPAs – including the CREST agreement upon which the Commission directed SCE to model this one – leave these decisions to developers as part of their challenge to offer the most responsive, creative and competitive offerings they can devise: they do not impose them on bidders to ensure 'consistency with utility-owned generation', in SCE's words.³

In our view, the SPVP was not adopted to enforce uniform development requirements between UOG and IPP projects, but to gain experience with the differing capabilities and costs that these parties can offer for this scale of PV development. SCE's 'consistency' requirements engrafted onto the Draft PPA not only inhibit developers' ability to tailor each project to its particular circumstances, but they undermine the Energy Division's goal of 'an auction process that puts downward pressure on price'.

³ Advice Letter, p. 9, under 'Key changes from the CREST Agreement'.



Recommendation 6: Delete draft section 7.17 from the PPA.

‘Retail Customer’ Requirement. Recurrent, like others who commented at the July 31 Workshop, also has concerns over SCE’s proposed language requiring that ‘Throughout the Term, Producer shall be a retail customer of SCE.’⁴ As a third-party developer/IPP leasing rooftop space on buildings owned and operated by others, Recurrent might not in every case become an SCE retail customer in the usual sense of buying electricity for itself at that facility from SCE. Moreover, characterizing third-party PV system owners as ‘retail customers’ could have unanticipated implications for state/federal jurisdiction, which can be avoided simply by rephrasing this requirement without changing its reported intent.

At the Workshop, we understood SCE representatives to say that, in their view, a ‘retail customer’ simply means someone who transfers power through a retail meter. If that is the intent of this provision, it can be better achieved through the simple language change recommended below:

Recommendation 7: Substitute the following language for SCE’s Draft PPA §7.18, as suggested in Attachment A to this Protest:

“Throughout the Term, Producer shall be served through a revenue quality meter, and shall obtain from SCE any retail electrical service needed to serve incidental electrical loads of the Generating Facility.”

Confidentiality Requirements. The Draft PPA, §14, generally prohibits either Party from disclosing confidential information⁵ to others. However, §14.1.1 lists *exemptions* from that prohibition, including among others disclosures:

“To such Party’s employees, lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;”

We are seriously concerned that this exemption could allow SCE personnel engaged in its third-party PPA procurement program to disclose sensitive competitive business information obtained in confidence from PPA bidders, to SCE employees, attorneys, advisors or others engaged in the utility-owned portion of its Solar PV Program.

As just one example cited at the July 31 Workshop, a prospective bidder might approach SCE’s PPA group with questions about the potential distribution system impacts of a promising PV project at a specific location, in order to decide whether to submit a proposal for a project at that location. Information conveyed to SCE’s PPA group about the site and the reasons the project seems promising, could be of significant value to other SCE groups responsible for finding good PV sites for the UOG portion of its Program. The exemption language quoted above arguably could allow such a disclosure to occur.

Throughout this proceeding, Recurrent has raised concerns about the need to ensure that the regulated utility does not use its resources to compete unfairly in competitive PV markets. One essential way to do that is to erect a firewall prohibiting the flow of sensitive developer information between the two halves of SCE’s Program – the PPA portion and the utility-owned portion. We believe this is vital to the integrity of both halves of the Program, and essential to the fairness of the Commission’s proposed comparison of the results of the two approaches as they proceed.

⁴ Draft PPA, §7.18.

⁵ As defined in Appendix A to the Draft PPA.



Recommendation 8: Add the following new §14.2 to SCE’s Draft PPA, reproduced in Attachment A to this Protest:

“14.2 Notwithstanding the foregoing or any other provision of this Agreement, SCE personnel responsible for, or otherwise involved in any way with, PPA procurements under the utility’s Solar Photovoltaic Program (SPVP) shall not disclose Confidential Information to other SCE employees or contractors responsible for, or otherwise involved in any way with, the utility-owned generation portion of the SPVP, and shall not themselves use such Information for any purpose other than administering or implementing the PPA portion of the SPVP. For purposes of this paragraph, ‘Confidential Information’ is not limited to such information exchanged between the parties on or after the Effective Date, but includes such information conveyed during any part of the PPA procurement process.”⁶

V. FACILITATING PROJECTS THAT EFFICIENTLY USE SCE’S DISTRIBUTION SYSTEM

In response to the Commission’s directive that SCE identify distribution areas where distributed PV will be desirable, the Advice Letter states (on page 4) that the utility will post on its website a list of zip codes identifying preferred locations and estimating available new PV capacity in each zip code, and that it will update the list at least more frequently than it issues new RFOs.

At the July 31 Workshop, a number of participants proposed that SCE provide distribution system information at a more granular level than zip codes by, for example, identifying individual circuits or substations that could benefit from PV installations. Recurrent appreciates this viewpoint, but on balance recommends that SCE’s zip code proposal be accepted in the interest of simplicity; to minimize transactions costs; and to expedite procurements.

CONCLUSION

SCE’s Advice Letter and Draft PPA provide a constructive and helpful start toward a workable PPA component for its Solar PV Program. Emphasizing project viability, allowing Tier 2 treatment for limited project-specific modifications to PPA terms, developing standard PPA terms for projects over 2 MW, eliminating mandatory buyouts, multi-round selections, and ‘one-size-fits-all’ requirements, and tightening non-disclosure requirements between the two halves of SCE’s Program will make it fairer, more efficient, and more workable. Recurrent Energy appreciates this opportunity to express its views, and looks forward to working with SCE and the Commission toward a very successful Solar PV Program.

Sincerely,

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415.381.7310

cc: Akbar Jazayeri, SCE
Service List A.08-03-015

⁶ The last sentence reflects revisions Recurrent is proposing to SCE’s definition of ‘Confidential Information’ in Appendix A to its Draft PPA. If those revisions are adopted, the last sentence quoted here could be deleted from new §14.2.

**ATTACHMENT A –
Redlined Solar PV Power Purchase & Sale AgreementRedlined**

**SOLAR PHOTOVOLTAIC PROGRAM
POWER PURCHASE AND SALE AGREEMENT
between
SOUTHERN CALIFORNIA EDISON COMPANY
and
[PRODUCER'S NAME]**

This Solar Photovoltaic Program Power Purchase and Sale Agreement (this “Agreement”) by and between Southern California Edison Company, a California corporation (“SCE”), and [Producer’s name], a [Producer’s form of business entity and state of registration] (“Producer”), is made, entered into and effective as of [Date of execution] (the “Effective Date”). Producer and SCE are sometimes referred to in this Agreement jointly as the “Parties” and individually as a “Party.” Unless the context otherwise specifies or requires, initially capitalized terms used in this Agreement have the meanings set forth in Appendix A.

1. RECITALS.

- 1.1. Producer is willing to construct, own and Operate the Generating Facility, and to sell the Product to SCE; and
- 1.2. SCE is willing to purchase the Product from Producer in accordance with the terms and conditions set forth in this Agreement.

The Parties, intending to be legally bound, agree as follows:

2. GENERATING FACILITY AND SITE; DELIVERY POINT; PRODUCT PRICE; SCHEDULING COORDINATOR.

- 2.1. The Generating Facility and the Site are described in Appendix B.
- 2.2. The name and address used by SCE to locate the Service Account(s) and Premises used to interconnect the Generating Facility to SCE’s electric system are as follows: [____].
- 2.3. The Gross Power Rating of the Generating Facility equals [____] kW DC.
- 2.4. The Net Power Rating of the Generating Facility equals [____] kW AC. The Net Power Rating is based on the sum of [Current Inverter continuous output ratings] [transformer continuous output ratings].
- 2.5. The annual energy production of the Generating Facility, net of Station Use, measured by the ISO- Approved Meter or Check Meter, as applicable, is expected to be [____] kWh.
- 2.6. The Delivery Point is [____]. *[SCE Note: Insert the name of the Pricing Node (PNode) used by the ISO for purposes of financial settlements for the Generating Facility.]*

2.7. The price for the Product delivered by Producer to SCE in accordance with this Agreement (the “Product Price”) equals \$[_____] per kWh.

2.8. The Compliance Costs Seller shall be required to bear during the Term shall be capped at [X] annually and [X] cumulatively (collectively, such caps the “Compliance Cost Cap”).

2.9. ~~2.8.~~ SCE is the Scheduling Coordinator under this Agreement. SCE shall take all steps necessary to be authorized as the Scheduling Coordinator throughout the Term. Producer shall cooperate with SCE in good faith to assure that SCE is authorized as the Scheduling Coordinator throughout the Term.

3. TERM; PROGRESS REPORTING.

3.1. The term of this Agreement (the “Term”) commences on [Date] (the “Term Start Date”) and ends at midnight Los Angeles Time on the day following the completion of twenty (20) Term Years from the Term Start Date (the “Term End Date”).

3.2. Producer may change the Term Start Date set forth in Section 3.1 by providing Notice to SCE at least three (3) Business Days before such Term Start Date; *provided, however*, that the Term Start Date must occur within eighteen (18) months of CPUC Approval, subject to Section 9 (Force Majeure).

3.3. In addition to the requirements set forth in Section 3.2, on the first day of each calendar month after the Effective Date and before the Term Start Date, Producer shall provide a report to SCE describing Producer’s progress relative to the development, construction, and startup of the Generating Facility, as well as a Notice of any anticipated change to the Term Start Date.

4. DEVELOPMENT SECURITY.

4.1. On or before the thirtieth (30th) day following the Effective Date, Producer shall post and thereafter maintain a development fee (the “Development Security”) equal to thirty dollars (\$30) for each kilowatt of the Gross Power Rating, as set forth in Section 2.3. The Development Security will be held by SCE and must be in the form of either a cash deposit or the Letter of Credit attached to this Agreement as Appendix C. If Producer establishes the Development Security in the form of a cash deposit, SCE shall make monthly Simple Interest Payments to Producer in accordance with the terms of this Agreement.

4.2. If, on or before the Term Start Date, Producer:

4.2.1. Demonstrates to SCE’s satisfaction that Producer has installed all of the equipment or devices necessary for the Generating Facility to satisfy the Gross Power Rating, SCE shall return the Development Security to Producer within thirty (30) days of the Term Start Date;

- 4.2.2. Has not installed any of the equipment or devices necessary for the Generating Facility to satisfy the Gross Power Rating, Producer shall forfeit, and SCE shall have the right to retain, the entire Development Security and terminate this Agreement; or
- 4.2.3. Has installed only a portion of the equipment or devices necessary for the Generating Facility to satisfy the Gross Power Rating, SCE shall return, within thirty (30) days of the Term Start Date, only the portion of the Development Security equal to the product of twenty dollars (\$20) per kW DC of the portion of the Gross Power Rating available to deliver the Product to SCE at the Delivery Point.

5. CPUC FILING AND APPROVAL OF THIS AGREEMENT. On or before the ~~sixtieth~~thirtieth (~~60~~30th) day following the Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval. SCE shall expeditiously seek CPUC Approval, including promptly responding to any requests for information related to the request for CPUC Approval. Producer shall use commercially reasonable efforts to support SCE in obtaining CPUC Approval. SCE has no obligation to seek rehearing or to appeal a CPUC decision that fails to approve this Agreement or that contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

6. TERMINATION; REMEDIES.

- 6.1. SCE may terminate this Agreement on Notice, which becomes effective at midnight on the thirty-first (31st) day after such Notice is given if:
 - 6.1.1. Producer fails to take all corrective actions specified in any SCE Notice, within the time frame set forth in such Notice such timeframe to be no less than thirty (30) days, that the Generating Facility is out of compliance with any term of this Agreement;
 - 6.1.2. Subject to Section 9 (Force Majeure), Producer fails to interconnect and Operate a Photovoltaic Module within the Generating Facility, in accordance with the terms and conditions of this Agreement, within one hundred twenty (120) days after SCE delivers electric energy for Station Use provided that the time period for Producer's performance under this Section 6.1.2 shall be extended if such failure to perform cannot reasonably be preformed within thirty (30) days and the Producer is making diligent efforts to cure such failure to perform;
 - 6.1.3. Producer abandons the Generating Facility;
 - 6.1.4. ~~Electric~~Except as a consequence of Force Majeure, electric output from the Generating Facility ceases for twelve (12) consecutive months;

- 6.1.5. ~~Any~~Prior to the Term Start Date, any interconnection study determines that upgrades are required to be made to SCE's transmission system in order to interconnect the Generating Facility to SCE's electric system;
 - 6.1.6. ~~The~~Subject to Section 9 (Force Majeure), the Term does not commence within eighteen (18) months of CPUC Approval;
 - 6.1.7. If Producer or the owner of the Site applies for or participates in the California Solar Initiative or any net energy metering tariff with respect to the Generating Facility, as set forth in Section 7.12.6 and Section 7.16, respectively; or
 - 6.1.8. Producer has not installed any of the equipment or devices necessary for the Generating Facility to satisfy the Gross Power Rating, as set forth in Section 4.2.2, provided that the time period for Producer's performance under this Section 6.1.8 shall be extended if such failure to perform cannot reasonably be preformed within thirty (30) days and the Producer is making diligent efforts to cure such failure to perform.
- 6.2. A Party may terminate this Agreement:
- 6.2.1. If any representation or warranty in this Agreement made by the other Party is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not remedied within ten (10) Business Days after Notice thereof from the non-breaching Party to the breaching Party; provided that, the breaching Party shall have the ability to cure, within thirty (30) days after Notice from the non-breaching Party, any representation or warranty that if uncured would not have a material adverse effect on the non-breaching Party provided further that such extended period shall not exceed ninety (90) additional days.
 - 6.2.2. Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the non-breaching Party or to the extent excused by Force Majeure) if such failure is not remedied within thirty (30) days after Notice of such failure is provided by the non-breaching Party to the breaching Party of such failure; which time period shall be extended if such failure to perform cannot reasonably be performed within thirty (30) days and the breaching Party is making diligent efforts to cure such failure to perform provided that such extended period shall not exceed ninety (90) additional days.
 - 6.2.3. If the other Party fails to make any payment due and owing under this Agreement, if such failure is not cured within five (5) Business Days after

Notice of such failure is provided by the non-breaching Party to the breaching Party; and

6.2.4. In accordance with Section 9.4.

6.3. This Agreement automatically terminates on the Term End Date.

6.4. If a Party terminates this Agreement in accordance with this Section 6, such Party will have the right to immediately suspend performance under this Agreement and pursue all remedies available at law or in equity against the other Party (including seeking monetary damages).

7. PRODUCER'S OBLIGATIONS.

7.1. Before the Term Start Date, Producer must demonstrate to SCE that Producer has satisfied all of the requirements for Producer to Operate the Generating Facility in accordance with the terms of this Agreement, Applicable Law, the SCE Tariffs and the ISO Tariff, and any other applicable contractual, tariff, legal and regulatory requirements.

7.2. Throughout the Term, Producer shall provide and convey the Product to SCE in accordance with the terms of this Agreement, and SCE shall have the exclusive right to the Product. Producer shall, at its own cost, [but subject to the Compliance Cost Cap](#), take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Green Attributes, Capacity Attributes and Resource Adequacy Benefits for SCE's benefit throughout the Term.

7.3. Producer hereby provides and conveys all Green Attributes associated with all electricity generation from the Generating Facility to SCE as part of the Product being delivered. Producer represents and warrants that Producer holds the rights to all Green Attributes from the Generating Facility, and Producer agrees to convey and hereby conveys all such Green Attributes to SCE as included in the delivery of the Product from the Generating Facility.

7.4. Throughout the Term, Producer shall grant, pledge, assign and otherwise commit to SCE the Net Qualifying Capacity of the Generating Facility in order for SCE to use in meeting its resource adequacy obligations under any Resource Adequacy Ruling.

7.5. As of the Effective Date and until the Term End Date, Producer may not provide or convey any of the Product to any individual or entity other than SCE.

7.6. Producer shall have Site Control as of the earlier of (i) the Term Start Date or (ii) any period before the Term Start Date to the extent necessary for Producer to perform its obligations under this Agreement and, in each case, will maintain

Site Control throughout the Term. Producer shall promptly provide SCE with Notice if there is any change in the status of Producer's Site Control.

- 7.7. Producer shall, at its own cost, but subject to the Compliance Cost Cap, obtain and maintain all interconnection rights and interconnection agreements, and any related Governmental Authority approvals required to enable interconnection with SCE's electric system to the Delivery Point.
- 7.8. Producer shall obtain and maintain all Permits and agreements necessary to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.
- 7.9. Producer shall Operate the Generating Facility in compliance with the SCE Tariffs and the ISO Tariff, and all Applicable Laws. Producer shall secure and maintain in full force all of the ISO agreements, certifications and approvals required in order for the Generating Facility to comply with the ISO Tariff.
- 7.10. Subject to the Compliance Cost Cap, Producer shall comply with all rules and regulations regarding PIRP if SCE elects to place the Generating Facility in PIRP. Producer shall install the Telemetry System that is designed to function in accordance with the ISO's PIRP protocols and SCE's communication system.
- 7.11. Producer shall, at its own cost, install, maintain and test the ISO-Approved Meter pursuant to the ISO Tariff, SCE's electric service requirements and Prudent Electrical Practices. SCE may, at its sole cost, furnish and install one Check Meter at the interconnection associated with the Generating Facility at a location provided by Producer that is compliant with SCE's electric service requirements. The Check Meter must be interconnected with SCE's communication network to permit (i) periodic, remote collection of revenue quality meter data, and (ii) back-up real time transmission of operating- quality meter data through the Telemetry System. SCE shall compare the Check Meter data (after adding compensation factors introduced by the ISO into the ISO-Approved Meter) to the ISO- Approved Meter data. If the deviation between the ISO-Approved Meter data and the Check Meter data for any comparison is greater than 0.3%, SCE shall provide Notice to Producer of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or ISO-Approved Meter, as applicable. Each Party shall bear its own costs for any meter check or recertification. Testing procedures and standards for the Check Meter will be the same as for a comparable SCE-owned meter. Producer shall have the right to have representatives present during all such tests.
- 7.12. Producer shall:
 - 7.12.1. Operate the Generating Facility in accordance with Prudent Electrical Practices;

- 7.12.2. Comply with the requirements set forth in Appendix D;
- 7.12.3. Use commercially reasonable efforts to Operate the Generating Facility so that the electric energy produced by the Generating Facility, net of Station Use, conforms with the Forecast provided in accordance with Appendix D;
- 7.12.4. Maintain and provide electronically or in hard copy a copy of all relevant daily Operating records to SCE within ~~20~~thirty (30) days of Notice from SCE, including records showing (i) real and reactive power production, (ii) changes in Operating status, (iii) protective apparatus operations, and (iv) any unusual conditions found during inspections;
- 7.12.5. At least 75 days before the Term End Date or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the ISO the name of the Scheduling Coordinator that will replace SCE, and (ii) cause the Scheduling Coordinator that will replace SCE to submit a letter to the ISO accepting the designation as Producer's Scheduling Coordinator;
- 7.12.6. Take all actions necessary to ensure that the owner of the Site waives all claims for eligibility for, and does not submit any claim for receipt of funds under the California Solar Initiative or any net energy metering tariff for the Generating Facility or any future modifications to the Generating Facility; and
- 7.12.7. ~~Comply~~Subject to the Compliance Cost Cap, comply with all NERC reliability standards and requirements applicable to the generator owner and generator operator of the Generating Facility.
- 7.13. Producer shall provide Notice to SCE within one (1) Business Day if there is a termination of, or cessation of service under, any agreement required in order for the Generating Facility to (i) interconnect with SCE's electric system, (ii) transmit and deliver electric energy to the Delivery Point, or (iii) own and operate any ISO-Approved Meter.
- 7.14. Producer agrees, that, in accordance with FERC Order No. 697, upon request of SCE, Producer shall submit a letter of concurrence in support of an affirmative statement by SCE that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Producer to SCE, as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Producer also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Producer to SCE.

- 7.15. With respect to WREGIS, [subject to the Compliance Cost Cap](#), Producer shall cause and allow SCE to be the “Qualified Reporting Entity” and “Account Holder” (as such terms are defined by WREGIS) for the Generating Facility.
- 7.16. Producer waives all claims for eligibility for, and will not submit any claim for receipt of funds under the California Solar Initiative or any net energy metering tariff for the Generating Facility or any future modifications to the Generating Facility.
- ~~7.17. With respect to the construction, alteration, demolition, installation, Operation, and repair work of the Generating Facility, Producer shall, and shall cause all of its contractors and subcontractors:~~
- ~~7.17.1. To comply with the prevailing wage requirements of Division 2, Part 7, Chapter 1 of the California Labor Code (Public Works);~~
- ~~7.17.2. To require that all Electricians employed or otherwise utilized be licensed as class C-10 electrical contractors under California’s Contractors’ State License Board Rules and Regulations, and be qualified to work under California Labor Code Section 3099 *et seq.*;~~
- ~~7.17.3. To the extent that apprentice Electricians are employed or otherwise utilized, to employ or otherwise utilize only apprentice Electricians that have enrolled in an apprentice training program that (i) is certified by the State of California, and (ii) has graduated at least one (1) apprentice per year for each of the five (5) years before the date that such apprentice Electrician is employed or otherwise utilized.~~
- 7.17. Throughout the Term, Producer shall be a retail customer of SCE [served through a revenue quality meter](#), and shall obtain [from SCE any](#) retail electrical service ~~from SCE~~ [needed](#) to serve incidental electrical loads of the Generating Facility.

8. BILLING AND PAYMENT

- 8.1. The amount of electric energy purchased by SCE from Producer under this Agreement is determined by the ISO-Approved Meter or Check Meter (after adding compensation factors introduced by the ISO into the ISO-Approved Meter), as applicable. Subject to and in accordance with the terms of this Agreement (including Sections 16.3 through 16.5), SCE shall pay the Product Price to Producer for the Product.
- 8.2. For the purpose of calculating monthly payments under this Agreement, the amount measured by the ISO-Approved Meter or Check Meter, as applicable, will be time-differentiated according to the time period and season of the receipt of the Product by SCE from Producer, as set forth in [Appendix E](#) (the “[TOU Periods](#)”), and the pricing will be weighted by the Energy Payment Allocation Factors set forth in [Appendix E](#).

- 8.3. As set forth in Appendix E, TOU Periods for the winter season are mid-peak, off-peak and super off- peak and TOU Periods for the summer season are on-peak, mid-peak and off-peak. The monthly payment will equal the sum of the monthly TOU Period payments for all TOU Periods in the month. Each monthly TOU Period payment will be calculated pursuant to the following formula, where “n” is the TOU Period being calculated:

$$\text{TOU PERIOD}_n \text{ PAYMENT} = A \times B \times C$$

Where:

A = Product Price, in \$/kWh.

B = Energy Payment Allocation Factor for the TOU Period being calculated.

C = The sum of energy recorded by the ISO-Approved Meter or Check Meter, as applicable, in all hours for the TOU Period being calculated, in kWh.

- 8.4. On or before the last Business Day of the month immediately following each calendar month, SCE shall determine the amount of electric energy received by SCE pursuant to this Agreement for each monthly period and provide a payment statement to Producer showing the calculation of the payment and payment.
- 8.5. Unless otherwise agreed in writing by the Parties, any payment due for the Product received under this Agreement will be satisfied by SCE issuing a check to Producer. Alternatively, SCE reserves the right, but is not obligated to apply any amount owed to Producer toward any amounts due to SCE from Producer for any charges incurred under this Agreement or for past due bills for electric service or for SCE services.
- 8.6. In the event adjustments to SCE’s payments are required as a result of inaccurate metering equipment, SCE shall determine the correct amount of energy received under this Agreement during the period of inaccuracy and recompute the amount due to or from Producer. Any refund due and payable to SCE by Producer or due by SCE to Producer resulting from inaccurate metering will be made within thirty (30) calendar days of SCE’s Notice to Producer by SCE of the amount due.
- 8.7. Monthly charges, if any, associated with any interconnection agreement, will be billed and paid pursuant to the applicable agreement, and monthly charges, if any, associated with electric service provided by SCE shall be billed and paid pursuant to the applicable SCE Tariffs.

- 8.8. Notwithstanding anything to the contrary set forth in this Agreement, this Section 8 is subject to any payment adjustment required under Sections 16.3 through 16.5.

9. FORCE MAJEURE.

- 9.1. Neither Party shall be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.
- 9.2. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the “Claiming Party”) shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:
- 9.2.1. The Claiming Party, on or before the fourteenth (14th) day after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
- 9.2.2. The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.
- 9.3. The suspension of the Claiming Party’s performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.
- 9.4. The non-Claiming Party may terminate this Agreement on at least ~~five~~twenty (~~5~~20) Business Days’ prior Notice, in the event of Force Majeure which materially interferes with such Party’s ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.

~~10. BUYOUT OPTION.~~

- ~~10.1. SCE, in its sole discretion, shall have the option (the “Buyout Option”), which Buyout Option must be exercised no later than sixty (60) days before the Term End Date, to purchase and acquire from Producer, all of Producer’s right, title and interest in and to all of Producer’s assets, real, personal or mixed, tangible and intangible, of every kind and description, which are required or useful for the ownership and Operation of the Generating Facility, including all Green Attributes, Capacity Attributes, Resource Adequacy Benefits, and applicable interconnection agreements.~~

~~10.2. The consideration to be paid by SCE to Producer with respect to the Buyout Option for the assets listed in Section 10.1 will be one hundred dollars (\$100) per MW DC of the Gross Power Rating.~~

10. INSURANCE.

10.1. Producer shall, at its own expense, starting on the Effective Date and until the Term End Date, and for such additional periods as may be specified below, provide and maintain in effect the following insurance policies and minimum limits of coverage as specified below, and such additional coverage as may be required by Applicable Law, with insurance companies authorized to do business in the state in which the services are to be performed, with an A.M. Best's Insurance Rating of not less than A-:VII:

10.1.1. Workers' compensation insurance with statutory limits, as required by the state having jurisdiction over Producer's employees, and employer's liability insurance with limits of not less than: (i) bodily injury by accident - \$1,000,000 each accident; (ii) bodily injury by disease - \$1,000,000 policy limit; and (iii) bodily injury by disease - \$1,000,000 each employee;

10.1.2. Commercial general liability insurance, written on an occurrence, not claims-made basis, covering all operations by or on behalf of Producer arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance must bear a combined single limit per occurrence and annual aggregate of not less than \$1,000,000, exclusive of defense costs, for all coverages. Such insurance must contain standard cross-liability and severability of interest provisions. If Producer elects, with SCE's written concurrence, to use a "claims made" form of commercial general liability insurance, then the following additional requirements apply: (i) the retroactive date of the policy must be prior to the Effective Date; and (ii) either the coverage must be maintained for a period of not less than four (4) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four (4) years after this Agreement terminates;

10.1.3. Commercial automobile liability insurance covering bodily injury and property damage with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance must cover liability arising out of Producer's use of all owned, non-owned and hired automobiles in the performance of the Agreement; and

10.1.4. Umbrella/excess liability insurance, written on an occurrence, not claims-made basis, providing coverage excess of the underlying employer's

liability, commercial general liability, and commercial automobile liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than four million dollars (\$4,000,000) per occurrence and in the annual aggregate.

- 10.2. The insurance requirements set forth in Section 11.1 may be provided by any combination of Producer's primary and excess liability policies.
- 10.3. The insurance requirements set forth in Section 11.1 will apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Producer's policies to the contrary. To the extent permitted by Applicable Law, Producer and its insurers shall be required to waive all rights of recovery from or subrogation against SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The commercial general liability insurance required in Section 11.1.2 and the umbrella/excess liability insurance required in Section 11.1.4 must name SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Producer's construction, use or ownership of the Generating Facility.
- 10.4. On or before the thirtieth (30th) day following the Effective Date, and within a reasonable time after coverage is renewed or replaced, Producer shall furnish to SCE certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to SCE. All deductibles, co-insurance and self-insured retentions applicable to the insurance above must be paid by Producer. All certificates of insurance must note that the insurers issuing coverage must endeavor to provide SCE with at least thirty (30) days' prior written notice in the event of cancellation of coverage. SCE's receipt of certificates that do not comply with the requirements stated in this Section 11.4, or Producer's failure to provide such certificates, do not limit or relieve Producer of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 11.4 and do not constitute a waiver of any of the requirements in this Section 11.4.
- 10.5. Producer shall remain liable for all acts, omissions or default of any subcontractor or subsupplier and shall indemnify, defend and hold harmless SCE for any and all loss or damages, as well as all costs, charges and expenses which SCE may suffer, incur, or bear as a result of any acts, omissions or default by or on behalf of any subcontractor or subsupplier.
- 10.6. If Producer fails to comply with any of the provisions of this Section 11, Producer, among other things and without restricting SCE's remedies under Applicable Law or otherwise, shall, at its own cost, act as an insurer and provide insurance in accordance with the terms and conditions of this Section

11. With respect to the required commercial general liability insurance set forth in Section 11.1.2, umbrella/excess liability insurance set forth in Section 11.1.4, and commercial automobile liability insurance set forth in Section 11.1.3, Producer shall provide a current, full and complete defense to SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer with an A.M. Best's Insurance Rating of A-:VII would have, had the insurance been maintained in accordance with the terms and conditions set forth in this Section 11 and given the required additional insured wording in the commercial general liability insurance and umbrella/excess liability insurance, and standard "Who is an Insured" provision in commercial automobile liability form.

10.7. All insurance certificates, endorsements, cancellations, terminations, alterations, and material changes of such insurance must be issued, clearly labeled with this Agreement's identification number and submitted in accordance with Section 12 and Appendix F.

11. NOTICES.

11.1. All Notices must be made in accordance with this Section 12 and Appendix F. Notices (other than Forecasts and Scheduling requests) must, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 12 are deemed given as follows:

11.1.1. Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise is deemed given at the close of business on the next Business Day;

11.1.2. Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out; and

11.1.3. Notice by first class United States mail is deemed given two (2) Business Days after the postmarked date.

11.2. A Party may change its address for Notices at any time by providing the other Party Notice of such change in accordance with Section 12.1.

11.3. All Notices must reference this Agreement's identification number, which is set forth on the first page of this Agreement.

11.4. The Parties may designate operating representatives to conduct the daily communications, which may be necessary or convenient for the administration of this Agreement. Such designations, including names, addresses, and phone

numbers may be communicated or revised by Notice provided in accordance with this Section 12 and Appendix F.

12. SCE'S ACCESS TO THE SITE; PROVISION OF RECORDS AND DATA.

12.1. SCE has the right to examine the Site and the Generating Facility for any purpose connected with this Agreement upon providing Producer with reasonable advance Notice under the circumstances.

12.2. Within thirty days of Buyer's request, Producer shall ~~promptly~~ provide to SCE all documents reasonably requested by SCE relating to:

12.2.1. The Generating Facility, including Producer's Operations and maintenance records, logs and other information, including meteorological data, solar irradiance data, unit availability, maintenance outages, circuit breaker operation requiring manual reset, relay targets and unusual events pertaining to the Generating Facility or its interconnection with SCE's electric system; and

12.2.2. The administration of this Agreement, or in order for SCE to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal.

13. CONFIDENTIALITY.

13.1. Neither Party may disclose any Confidential Information to a third party, other than:

13.1.1. To such Party's employees, lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;

13.1.2. Notwithstanding the foregoing or any other provision of this Agreement, SCE personnel responsible for, or otherwise involved in any way with, PPA procurements under the utility's Solar Photovoltaic Program (SPVP) shall not disclose Confidential Information to other SCE employees or contractors responsible for, or otherwise involved in any way with, the utility-owned generation portion of the SPVP, and shall not themselves use such Information for any purpose other than administering or implementing the PPA portion of the SPVP. For purposes of this paragraph, 'Confidential Information' is not limited to such information exchanged between the parties on or after the Effective Date, but includes such information conveyed during any part of the PPA procurement process."

13.1.3. To potential Lenders with the consent of SCE, which consent will not be unreasonably withheld;

- 13.1.4. To SCE's Procurement Review Group, as defined in D.02-08-071, subject to any applicable limitations and subject to a protective order applicable to SCE's Procurement Review Group;
- 13.1.5. With respect to Confidential Information, the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information;
- 13.1.6. In order to comply with any Applicable Law or any exchange, Control Area or ISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party;
- 13.1.7. In order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC; and
- 13.1.8. To the ISO or as otherwise may reasonably be required in order to participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electric energy sold or to be sold to SCE under this Agreement.

14. REPRESENTATIONS, WARRANTIES, AND COVENANTS.

- 14.1. On the Effective Date, each Party represents, warrants, and covenants to the other Party that:
 - 14.1.1. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
 - 14.1.2. It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
 - 14.1.3. The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws;
 - 14.1.4. This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms;
 - 14.1.5. There is not pending, or to its knowledge, threatened against it or, in the case of Producer, any of its affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;

14.1.6. It is acting for its own account, and its decision to enter into this Agreement is based on its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement; and

14.1.7. It has not relied on any promises, representations, statements or information of any kind that are not contained in this Agreement in deciding to enter into this Agreement.

14.2. Producer represents, warrants and covenants to SCE that:

14.2.1. As of the Effective Date and until the Term End Date, Producer (i) does not, and will not convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than SCE, (ii) will not start-up or Operate the Generating Facility per instruction of or for the benefit of any third party, except as required by other Applicable Laws, and (iii) the Generating Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource, as such term is defined in Public Utilities Code Section 399.12 or Section 399.16 (“ERR Requirements”), and (iv) the output delivered to SCE qualifies under the requirements of the California Renewables Portfolio Standard (the “RPS Requirements”) [in effect as of the Effective Date](#).

14.2.2. Throughout the Term: (i) it will deliver the Product to SCE free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any individual or entity; and (iii) it shall hold the rights to all of the Product; ~~and~~.

14.2.3. Neither Producer nor, to the best of Producer’s knowledge, the owner of the Site has participated in or submitted any claim for receipt of funds under the California Solar Initiative or any net energy metering tariff for the Generating Facility.

15. STATUS OF THE GENERATING FACILITY.

15.1. Producer shall provide prompt Notice to SCE if the Generating Facility or the Product ceases to comply with the ERR Requirements or the RPS Requirements.

15.2. Upon receipt of a Notice from SCE indicating that SCE has determined, in its reasonable discretion, that the Generating Facility may no longer comply with the ERR Requirements or RPS Requirements, Producer shall, within fifteen (15) days of receiving such Notice, provide to SCE evidence sufficient to show that the Generating Facility continues to comply with the ERR Requirements or RPS Requirements, as applicable. If SCE determines, in its reasonable discretion, that Producer failed to provide evidence sufficient to show that the

Generating Facility continues to comply with the ERR Requirements or the RPS Requirements, as applicable, then the Generating Facility will no longer be deemed to comply with the ERR Requirements or RPS Requirements (the “ERR/RPS Status Change”), as applicable, until such time as Producer demonstrates to SCE’s reasonable satisfaction that the Generating Facility complies with the ERR Requirements and RPS Requirements.

- 15.3. Upon making a determination that the Generating Facility no longer complies with the ERR Requirements or the RPS Requirements, SCE shall revise its records and the administration of this Agreement to reflect such determination and shall provide Notice to Producer of its determination. Such Notice must specify the effective date of the ERR/RPS Status Change, which date will be the first day of the calendar month for which SCE determines in its reasonable discretion that the Generating Facility first ceased to comply with the ERR Requirements or RPS Requirements. SCE’s Notice provided in accordance with this Section 16.3 must include an invoice for the refund of payments that were made to Producer during the period between the effective date of the ERR/RPS Status Change and the date of the last Notice in reliance upon Producer’s representations that the Generating Facility complied with the ERR Requirements and RPS Requirements. Any amounts to be paid or refunded by Producer to SCE, as may be invoiced by SCE in accordance with this Section 16.3, must be paid to SCE within thirty (30) days of Producer’s receipt of such invoice.
- 15.4. ~~During~~Subject to Section 15.5, during the entire period that the Generating Facility no longer complies with the ERR Requirements or the RPS Requirements, SCE will not be obligated to pay Producer for the Product.
- 15.5. Notwithstanding anything to the contrary contained in this Agreement, if there is a change in Applicable Law that results in the Producer no longer meeting ~~the requirements related to WREGIS or PIRP, or~~ ERR Requirements or, RPS Requirements, or any other regulatory compliance requirement under this Agreement, SCE shall continue to pay Producer for the Product so long as SCE determines that Producer has used, and will continue to use, commercially reasonable efforts to comply with such change in Applicable Law, provided however that that Producer shall not be obligated to incur costs in excess of the Compliance Cost Cap in connection with any such compliance undertaking.
- 15.6. Producer acknowledges and agrees that SCE may periodically inspect the Generating Facility or require documentation from Producer to monitor the Generating Facility’s compliance with the ERR Requirements and RPS Requirements.

16. INDEMNIFICATION.

- 16.1. Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party

against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement. This indemnity applies notwithstanding the active or passive negligence of the indemnitee; provided, however, that neither Party is indemnified under this Agreement for its loss, liability, damage, claim, cost, charge, demand or expense to the extent resulting from its own negligence or willful misconduct.

- 16.2. Producer shall defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, for and against any penalty imposed upon SCE to the extent caused by Producer's failure to fulfill its obligations as set forth in Sections 7.2 through 7.4.
- 16.3. Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 15. Notwithstanding anything to the contrary in this Agreement, if Producer fails to comply with the provisions of Section 11, Producer shall, at its own cost, defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any individual or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Producer complied with all of the provisions of Section 11. The inclusion of this Section 17.3 is not intended to create any express or implied right in Producer to elect not to provide the insurance required under Section 11.
- 16.4. All indemnity rights survive the termination of this Agreement for 12 months.

17. ARBITRATION. Except for matters relating to specific performance, injunctive relief or other equitable remedies, the Parties agree to submit to arbitration any and all matters in dispute or controversy among them concerning the terms of this Agreement. Unless the Parties agree to alternative arrangements, the selection of arbitrators and the procedure must be in accordance with the commercial arbitration rules then in effect of the Judicial Arbitration and Mediation Services, Inc. Any award rendered is final and conclusive upon the Parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration must be borne equally by the Parties; provided, however, that each Party shall pay for and bear the costs of its own experts, evidence and counsel's fees. Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and

unless the Parties agree to a different arrangement, the place of the arbitration will be in Los Angeles, California.

18. ASSIGNMENT. ~~Producer~~Neither Party may ~~not~~ assign this Agreement or its rights or obligations under this Agreement without ~~SCE~~the other Party's prior written consent, which consent ~~will~~shall not be unreasonably withheld, provided, however, that Producer may assign, transfer, sell, pledge or encumber this Agreement or the accounts, revenues, or proceeds hereof to its financing providers. Any assignment of this Agreement by ~~Producer~~a Party without ~~SCE~~the other Party's written consent ~~is not valid~~shall be void and unenforceable.

19. MISCELLANEOUS.

- 19.1. Except as may otherwise be provided in this Agreement, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. Liability is limited to direct actual damages only, such direct actual damages are the sole and exclusive remedy and all other remedies or damages at law or in equity are waived unless expressly herein provided. Unless expressly provided for in this Agreement, neither Party is liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages.
- 19.2. This Agreement will not be construed against any Party as a result of the preparation, substitution, or other event of negotiation, drafting or execution thereof.
- 19.3. No amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.
- 19.4. This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.
- 19.5. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- 19.6. The term "including" when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.
- 19.7. The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.
- 19.8. This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties.

- 19.9. Whenever this Agreement refers to any law, tariff, government department or agency, regional reliability council, SCE's electric system, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.
- 19.10. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.
- 19.11. The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to a "Section" or an "Appendix" refer to the corresponding Section or Appendix of this Agreement. Unless otherwise specified, all references to a "Section" in Appendices A through F refer to the corresponding Section in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.
- 19.12. None of the provisions of this Agreement will be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder may not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same will continue and remain in full force and effect.
- 19.13. This Agreement does not constitute an agreement by SCE to provide retail electrical service to Producer or any third party. Such arrangements must be made separately with SCE.
- 19.14. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties' covenants, agreements, representations or warranties applicable to, or to be performed at, before or as a result of the termination of this Agreement.
- 19.15. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY

TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

- 19.16. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement are eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

[PRODUCER’S NAME],

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a [Producer’s form of business entity and state
of registration]

a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPENDIX A **DEFINITIONS**

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Appendix A:

“Agreement” has the meaning set forth in the Preamble.

“Applicable Law” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to any Party, the Generating Facility or the terms of this Agreement.

“Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday following Thanksgiving. A Business Day begins at 8:00 A.M. and end at 5:00 P.M. local time for the Party sending the Notice or payment or performing a specified action.

~~“Buyout Option” has the meaning set forth in Section 10.1.~~

“California Solar Initiative” means the California Solar Initiative Program implemented and overseen by the CPUC, and as may be revised from time to time.

“Capacity Attributes” means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including any accounting construct counted toward any resource adequacy requirements, attributed to or associated with the Generating Facility or any unit of generating capacity of the Generating Facility throughout the Term.

“CEC” means the California Energy Commission.

“Check Meter” means the SCE revenue-quality meter section or meter(s), which SCE may require at its discretion, and which will include those devices normally supplied by SCE or Producer under the applicable utility electric service requirements.

“Claiming Party” has the meaning set forth in Section 9.2.

“Compliance Costs” means all reasonable out-of-pocket costs and expenses incurred by Producer and paid directly to third parties in connection with any change in Applicable Law, including registration fees, volumetric fees, license renewal fees, external consultant fees necessary for compliance.

“Compliance Costs Cap” has the meaning set forth in Section 2.8.

“Confidential Information” means all oral or written communications exchanged between the Parties ~~on or after the Effective Date~~ relating to the procurement or implementation of this Agreement, including but not limited to information related to Producer’s compliance with Operating and efficiency standards applicable to the Generating Facility. Confidential Information does not include information that (i) is in the public domain ~~as of the Effective Date~~

or which comes into the public domain ~~after the Effective Date~~ from a source other than from the other Party, (ii) either Party can demonstrate in writing was already known to such Party on a non-confidential basis ~~before the Effective Date~~, (iii) comes to a Party from a bona fide third-party source not under an obligation of confidentiality, and (iv) is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

“Control Area” means the electric power system (or combination of electric power systems) under the operational control of the ISO or any other electric power system under the operation control of another organization vested with authority comparable to that of the ISO.

“CPUC” means the California Public Utilities Commission.

“CPUC Approval” means either (1) a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms, or (2) a final and non-appealable disposition of the CPUC’s Energy Division, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms or deems approved an advice letter requesting the following terms:

- (a) Approves this Agreement in its entirety, including payments to be made by SCE, subject to CPUC review of SCE’s administration of the Agreement; and
- (b) Finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining SCE’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on (1) the date that a CPUC decision containing such findings becomes final and non-appealable, or (2) the date that a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings becomes final and non-appealable..

“Current Inverter” means the equipment or device(s) that convert DC electricity into AC electricity.

“DC Collection System” means the DC equipment, cables, components, devices and materials that interconnect the Photovoltaic Modules with the Current Inverters.

“Development Security” has the meaning set forth in Section 4.1.

“Delivery Point” has the meaning set forth Section 2.6.

“Effective Date” has the meaning set forth in the Preamble.

“Electrician” means an individual responsible for placing, installing, erecting or connecting any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or

any part thereof, which generate, transmit, transform or utilize electrical energy in any form or for any purpose.

“Energy Payment Allocation Factors” are those certain factors used to calculate TOU Period payments, as further described in Sections 8.2 and 8.3, and as set forth in Appendix E.

“ERR Requirements” has the meaning set forth in Section 15.2.1.

“ERR/RPS Status Change” has the meaning set forth in Section 16.2.

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure” means any event or circumstance (that is not anticipated as of the Effective Date) to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. Force Majeure does not include: (i) a failure of performance of any other Person, including any individual or entity providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as Force Majeure; (ii) failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility; (iii) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as Force Majeure); or (iv) a lack of solar radiation, except to the extent that such lack of radiation was caused by an event that would otherwise qualify as Force Majeure. Notwithstanding the foregoing, failure to obtain any Permits timely and properly applied for may qualify as Force Majeure.

“Forecast” means the hourly forecast of either the sum of the Current Inverter continuous electrical output ratings for Current Inverters made operational for a stated forecast period (in MWh) or electric energy (in MWh) of the Generating Facility in accordance with SCE’s instructions.

“Generating Facility” means Producer’s solar photovoltaic generating facility, as more particularly described in Appendix B, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at such facility, excluding the Site, land rights and interests in land.

“Governmental Authority” means any (i) federal, state, local, municipal or other government, (ii) governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, and (iii) court or governmental tribunal.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facility, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;¹
- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

Green Attributes do not include:

- (i) Any energy, capacity, reliability or other power attributes from the Generating Facility,
- (ii) Production tax credits associated with the construction or operation of the Generating Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Generating Facility that are applicable to a state or federal income taxation obligation,
- (iii) Fuel-related subsidies or "tipping fees" that may be paid to Producer to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) Emission reduction credits encumbered or used by the Generating Facility for compliance with local, state, or federal operating and/or air quality permits.

If the Generating Facility is a biomass or biogas facility and Producer receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide SCE with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Generating Facility.

"Gross Power Rating" means the value, in kW DC, set forth in Section 2.3 which is the sum of all Photovoltaic Module DC Ratings for Photovoltaic Modules to be installed at the Site as indicated in Appendix B.

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

“Interest Rate” means an annual rate equal to the rate published in The Wall Street Journal as the “Prime Rate” (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two (2) percentage points; *provided, however*, that in no event will the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

“ISO” means the California Independent System Operator Corporation or successor entity that dispatches certain generating units and loads and controls the transmission facilities of entities that (i) own, operate and maintain transmission lines and associated facilities or have entitlements to use certain transmission lines and associated facilities, and (ii) have transferred to the ISO or its successor entity operational control of such facilities or entitlements.

“ISO-Approved Meter” means any revenue quality, electric energy measurement meter furnished by Producer, that (i) is designed, manufactured and installed in accordance with the ISO’s metering requirements, or, to the extent that the ISO’s metering requirements do not apply, Prudent Electrical Practices, and (ii) includes all of the associated metering transformers and related appurtenances that are required in order to measure the net electric energy output from the Generating Facility.

“ISO-Approved Quantity” means the total quantity of electric energy SCE Schedules with the ISO and the ISO approves in its final schedule which is published in accordance with the ISO Tariff.

“ISO Tariff” means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“Lease” means one or more agreements whereby Producer leases the Site described in Appendix B from the owner of the Site, the term of which lease begins on or before the Effective Date and extends at least through the Term End Date.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit provided by Producer from an issuer acceptable to SCE that is either a U.S. commercial bank or a U.S. branch of a foreign bank with the bank having a Credit Rating of at least “A-” from S&P and Fitch and “A3” from Moody’s, in the form of Appendix C. Producer must bear the costs of all Letters of Credit.

“NERC” means the North American Electric Reliability Corporation, or any successor entity.

“Net Qualifying Capacity” has the meaning set forth in the ISO Tariff.

“Net Power Rating”, in kW AC, is the sum of all Current Inverter continuous output ratings or any transformer continuous output ratings, whichever is less, located between the Current Inverters and the ISO-Approved Meter.

“Notice” means notices, requests, statements or payments provided in accordance with Section 12 and Appendix F.

“Operate” means to provide (or the provision of) all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use, management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in accordance with Prudent Electrical Practices.

“Parties” and “Party” have the meanings set forth in the Preamble.

“Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the ISO, in order to develop, construct, Operate, maintain, improve, refurbish and retire the Generating Facility or to Schedule and deliver the electric energy produced by the Generating Facility to SCE, including an authority to construct or conditional use permit.

“Photovoltaic Module” means the individual component that produces DC electric energy from solar radiation.

“Photovoltaic Module DC Rating” means, for each Photovoltaic Module installed or to be installed at the Site, the number (expressed in kW_{PDC}) stated on the nameplate affixed thereto representing the manufacturer’s maximum (at “peak” sunlight) DC power rating at the standard test condition (“P_{mp}” or Power maximum at peak).

“PIRP” (i.e., Participating Intermittent Resource Program) means the ISO’s intermittent resource program initially established pursuant to Amendment No. 42 of the ISO Tariff in Docket No. ER02-922-000, or any successor program that SCE determines accomplishes a similar purpose.

“Premises” has the meaning set forth in SCE’s Rule 1.

“Producer” has the meaning set forth in the Preamble.

“Product” means (i) all electric power and energy produced by the Generating Facility, net of Station Use, and (ii) all Green Attributes, Capacity Attributes, and Resource Adequacy Benefits.

“Product Price” has the meaning set forth in Section 2.7.

“Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer’s warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the ISO and Applicable Laws. Prudent Electrical Practices include taking reasonable steps to ensure that: (i) equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility’s needs; (ii) sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are

capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site; (iii) preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe Operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools; (iv) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; (v) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or SCE's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and (f) equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for [solar](#) electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site ~~and under both normal and emergency conditions~~.

"Renewable Energy Credit" has the meaning set forth Public Utilities Code Section 399.12(g), as may be amended from time to time or as further defined or supplemented by Applicable Law.

"Resource Adequacy Benefits" means the rights and privileges attached to the Generating Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and include any local, zonal or otherwise locational attributes associated with the Generating Facility.

"Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time throughout the Term.

"RPS Requirement" has the meaning set forth in Section 15.2.1.

"Rule" means SCE Tariff sheets that set forth the application of all rates, charges, and service when such applicability is not set forth in and as part of the rate schedules.

"SCE" has the meaning set forth in the Preamble.

"SCE Tariffs" means the entire body of effective rates, rentals, charges, and rules collectively of SCE, as set forth in this Agreement, and including title page, preliminary statement, service area maps, rate schedules, list of contracts and deviations, Rules, and sample forms.

"Schedule" means the action of the Scheduling Coordinator, or its designated representatives, of notifying, requesting, and confirming to the ISO, the ISO-Approved Quantity of electric energy.

"Scheduling Coordinator" means the entity certified by the ISO for the purposes of undertaking the functions specified by ISO Tariff Section 2.2.6, as amended by FERC from time-to-time.

"Service Account" has the meaning set forth in SCE's Rule 1.

“Simple Interest Payment” means a dollar amount calculated by multiplying the (i) dollar amount on which the Simple Interest Payment is based, times (ii) the Interest Rate, times (iii) the result of dividing the number of days in the calculation period by 360.

“Site” means the real property on which the Generating Facility is, or will be located, as further described in Appendix B.

“Site Control” means that Producer (i) owns the Site, (ii) is the lessee of the Site under a Lease, or (iii) is the holder of a right-of-way grant or similar instrument with respect to the Site.

“Station Use” means the electric energy produced by the Generating Facility that is: (i) used within the Generating Facility to power the lights, motors, control systems and other electrical loads, such as meteorological equipment that are necessary for Operation; and (ii) consumed within the Generating Facility’s DC Collection System as losses within the Photovoltaic Modules, associated wiring, combiner boxes, Current Inverters, transformers and other equipment.

“Telemetry System” means a system of electronic components that collects all required telemetry in accordance with the PIRP and SCE operational requirements and communicates this telemetry to the ISO and SCE as required by applicable tariff or this Agreement.

“Term” has the meaning set forth in Section 3.1.

“Term End Date” has the meaning set forth in Section 3.1.

“Term Start Date” has the meaning set forth in Section 3.1.

“Term Year” means a twelve (12) month period beginning on the first day of the calendar month following the Term Start Date and each successive twelve (12) month period thereafter.

“TOU Periods” has the meaning set forth in Section 8.2 and Appendix E.

“Web Client” has the meaning set forth in Section 2.1.1. of Appendix D.

“WECC” means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Southwestern Canada, and Northwestern Mexico.

“WREGIS” means the Western Renewable Energy Generation Information System.

Document comparison by Workshare Professional on Tuesday, August 04, 2009
6:44:01 PM

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Rendering set	standard

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<u>Insertion</u>	
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Style change	
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Moved to	0
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Format changed	0
Total changes	96

Attachment B – Comparison Matrix: PPA Changes Proposed by Solar Alliance & Recurrent

The following matrix shows changes to SCE’s Draft PPA language proposed by Recurrent Energy, and Recurrent’s reasons for proposing the change. It also indicates where the same or different changes have been proposed by Solar Alliance.

● = as proposed by Solar Alliance (SA) and/or Recurrent (R)

○ = different changes proposed by Solar Alliance

PPA §	SCE Language	Proposed Change	SA	R	Recurrent Reason
2.6	The Delivery Point is []. <i>[SCE Note: Insert the name of the Pricing Node (PNode) used by the ISO for purposes of financial settlements for the Generating Facility.]</i>	The Delivery Point <u>shall be the Interconnection Point.</u>	●		N/A
2.8	N/A	<u>The Compliance Costs Seller shall be required to bear during the Term shall be capped at [X] annually and [X] cumulatively (collectively, such caps the “Compliance Cost Cap”).</u>	●	●	Implement a cap for costs due to unforeseen regulatory changes.
3.2	Producer may change the Term Start Date set forth in Section 3.1 by providing Notice to SCE at least three (3) Business Days before such Term Start Date; provided, however, that the Term Start Date must occur within eighteen (18) months of CPUC Approval	Producer may change the Term Start Date set forth in Section 3.1 by providing Notice to SCE at least three (3) Business Days before such Term Start Date; provided, however, that the Term Start Date must occur within eighteen (18) months of CPUC Approval, <u>subject to Section 9 (Force Majeure).</u>	●	●	Clarify that Force Majeure applies in this case
4.1	On or before the thirtieth (30th) day following the Effective Date, Producer shall post and thereafter maintain a development fee (the “Development Security”) equal to twenty [\$20] for each kilowatt of the Gross Power Rating, as set forth in Section 2.3. . . .	On or before the thirtieth (30th) day following the Effective Date, Producer shall post and thereafter maintain a development fee (the “Development Security”) equal to <u>thirty [\$30]</u> for each kilowatt of the Gross Power Rating, as set forth in Section 2.3. . . .	○	●	Recurrent proposes to increase development security from \$20 to \$30/kWh as a proxy for financial viability and to maintain consistency with RPS contracts. (Solar Alliance proposes to reduce development security from \$20 to \$15/kWh.)
5	CPUC FILING AND APPROVAL OF THIS AGREEMENT. On or before the sixtieth [60th] day following the Effective Date, . . .	CPUC FILING AND APPROVAL OF THIS AGREEMENT. On or before the <u>thirtieth [30th]</u> day following the Effective Date, . . .	●	●	Reduce timeline to help speed CPUC approval process
6.1.1	Producer fails to take all corrective actions specified in any SCE Notice, within the time frame set forth in such Notice, that the Generating Facility is out of compliance with any term of this Agreement;	Producer fails to take all corrective actions specified in any SCE Notice, within the time frame set forth in such Notice <u>such timeframe to be no less than thirty (30) days,</u> that the Generating Facility is out of compliance with any term of this Agreement;	●	●	Include reasonable notice time
6.1.2	Producer fails to interconnect and Operate a Photovoltaic Module within the Generating Facility, in accordance with the terms and conditions of this Agreement, within one hundred twenty (120) days after SCE delivers electric energy for Station Use	<u>Subject to Section 9 (Force Majeure),</u> Producer fails to interconnect and Operate a Photovoltaic Module within the Generating Facility, in accordance with the terms and conditions of this Agreement, within one hundred twenty (120) days after SCE delivers electric energy for Station Use <u>provided that the time period for Producer’s performance under this Section 6.1.2 shall be extended if such failure to perform cannot reasonably be cured within thirty (30) days and the Producer is making diligent efforts to cure such failure to perform;</u>	●	● ○	Clarify that Force Majeure applies in this case. Permit a Producer making reasonable good faith efforts additional time to correct certain performance delays. (Recurrent also proposes to change ‘performed’ to ‘cured’ for clarity.)
6.1.4	Electric output from the Generating Facility ceases for twelve (12) consecutive months	<u>Except as a consequence of Force Majeure,</u> electric output from the Generating Facility ceases for twelve (12) consecutive months;	●	●	Clarify that Force Majeure applies in this case

**Attachment B – Comparison Matrix:
PPA Changes Proposed by Solar Alliance & Recurrent**

PPA §	SCE Language	Proposed Change	SA	R	Recurrent Reason
6.1.5	Any interconnection study determines that upgrades are required to be made to SCE's transmission system in order to interconnect the Generating Facility to SCE's electric system;	<u>Prior to the Term Start Date</u> , any interconnection study determines that upgrades are required to be made to SCE's transmission system in order to interconnect the Generating Facility to SCE's electric system;	●	●	Clarify that the agreement cannot be terminated for this reason after the project is online
6.1.6	The Term does not commence within eighteen (18) months of CPUC Approval;	<u>Subject to Section 9 (Force Majeure)</u> , the Term does not commence within eighteen (18) months of CPUC Approval;	●	●	Clarify that Force Majeure applies in this case
6.1.8	Producer has not installed any of the equipment or devices necessary for the Generating Facility to satisfy the Gross Power Rating, as set forth in Section 4.2.2	Producer has not installed any of the equipment or devices necessary for the Generating Facility to satisfy the Gross Power Rating, as set forth in Section 4.2.2, <u>provided that the time period for Producer's performance under this Section 6.1.8 shall be extended if such failure to perform cannot reasonably be cured within thirty (30) days and the Producer is making diligent efforts to cure such failure to perform.</u>	● ○	●	Permit a Producer making reasonable good faith efforts additional time to correct certain performance delays. (Recurrent also proposes to change 'performed' to 'cured' for clarity.)
6.2.1	If any representation or warranty in this Agreement made by the other Party is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not remedied within ten (10) Business Days after Notice thereof from the non-breaching Party to the breaching Party	If any representation or warranty in this Agreement made by the other Party is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not remedied within ten (10) Business Days after Notice thereof from the non-breaching Party to the breaching Party, <u>provided that, the breaching Party shall have the ability to cure, within thirty (30) days after Notice from the non-breaching Party, any representation or warranty that if uncured would not have a material adverse effect on the non-breaching Party provided further that such extended period shall not exceed ninety (90) additional days;</u>	●	●	Permits either party additional time to cure certain errors.
6.2.2	Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the non-breaching Party or to the extent excused by Force Majeure) if such failure is not remedied within thirty (30) days after Notice of such failure is provided by the non-breaching Party to the breaching Party of such failure	Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the non-breaching Party or to the extent excused by Force Majeure) if such failure is not remedied within thirty (30) days after Notice of such failure is provided by the non-breaching Party to the breaching Party of such failure, <u>which time period shall be extended if such failure to perform cannot reasonably be performed within thirty (30) days and the breaching Party is making diligent efforts to cure such failure to perform provided that such extended period shall not exceed ninety (90) additional days.</u>	●	●	Permit either party making reasonable good faith efforts additional time to correct certain performance delays.
7.2	Throughout the Term, Producer shall provide and convey the Product to SCE in accordance with the terms of this Agreement, and SCE shall have the exclusive right to the Product. Producer shall, at its own cost, take all reasonable actions and execute all documents or instruments . . .	Throughout the Term, Producer shall provide and convey the Product to SCE in accordance with the terms of this Agreement, and SCE shall have the exclusive right to the Product. Producer shall, at its own cost, <u>but subject to the Compliance Cost Cap</u> , take all reasonable actions and execute all documents or instruments . . .	●	●	Implement a cap for costs due to unforeseen regulatory changes.

**Attachment B – Comparison Matrix:
PPA Changes Proposed by Solar Alliance & Recurrent**

PPA §	SCE Language	Proposed Change	SA	R	Recurrent Reason
7.7	Producer shall, at its own cost obtain and maintain all interconnection rights and interconnection agreements, and any related Governmental Authority approvals required to enable interconnection with SCE’s electric system to the Delivery Point.	Producer shall, at its own cost, <u>but subject to the Compliance Cost Cap</u> , obtain and maintain all interconnection rights and interconnection agreements, and any related Governmental Authority approvals required to enable interconnection with SCE’s electric system to the Delivery Point.	●	●	Implement a cap for costs due to unforeseen regulatory changes.
7.10	Producer shall comply with all rules and regulations regarding PIRP if SCE elects to place the Generating Facility in PIRP. Producer shall install the Telemetering System that is designed to function in accordance with the ISO’s PIRP protocols and SCE’s communication system	<u>Subject to the Compliance Cost Cap</u> , Producer shall comply with all rules and regulations regarding PIRP if SCE elects to place the Generating Facility in PIRP. Producer shall install the Telemetering System that is designed to function in accordance with the ISO’s PIRP protocols and SCE’s communication system.	●	●	Implement a cap for costs due to unforeseen regulatory changes.
7.12.4	Maintain and provide electronically or in hard copy a copy of all relevant daily Operating records to SCE within 20 days of Notice from SCE, including records showing (i) real and reactive power production, (ii) changes in Operating status, (iii) protective apparatus operations, and (iv) any unusual conditions found during inspections	Maintain and provide electronically or in hard copy a copy of all relevant daily Operating records to SCE within <u>thirty (30) days</u> of Notice from SCE, including records showing (i) real and reactive power production, (ii) changes in Operating status, (iii) protective apparatus operations, and (iv) any unusual conditions found during inspections	●	●	To provide adequate time to locate, review, and submit relevant records
7.12.5	At least 75 days before the Term End Date . . .	At least <u>seventy-five (75)</u> days before the Term End Date . . .	●		
7.12.7	Comply with all NERC reliability standards and requirements applicable to the generator owner and generator operator of the Generating Facility	<u>Subject to the Compliance Cost Cap</u> , comply with all NERC reliability standards and requirements applicable to the generator owner and generator operator of the Generating Facility	●	●	Implement a cap for costs due to unforeseen regulatory changes.
7.15	With respect to WREGIS Producer shall cause and allow SCE to be the “Qualified Reporting Entity” and “Account Holder” (as such terms are defined by WREGIS) for the Generating Facility.	With respect to WREGIS, <u>subject to the Compliance Cost Cap</u> , Producer shall cause and allow SCE to be the “Qualified Reporting Entity” and “Account Holder” (as such terms are defined by WREGIS) for the Generating Facility.	●	●	Implement a cap for costs due to unforeseen regulatory changes.
7.17	With respect to the construction, alteration, demolition, installation, Operation, and repair work of the Generating Facility, Producer shall, and shall cause all of its contractors and subcontractors ...	[Delete section and all subsections]	○	●	Avoid ‘one-size-fits-all’ requirements to allow IPP competition & contracting flexibility, & accord with RPS contracts
7.18	Throughout the Term, Producer shall be a revenue retail customer of SCE, and shall obtain from SCE any retail electrical service from SCE needed to serve incidental electrical loads of the Generating Facility	Throughout the Term, Producer shall be <u>served through a revenue quality meter</u> , and shall obtain <u>from SCE any retail electrical service needed</u> to serve incidental electrical loads of the Generating Facility		●	Conform ‘retail customer’ requirement to 7/31 Workshop discussion, & avoid possible federal/state jurisdictional issues
9.4	The non-Claiming Party may terminate this Agreement on at least 5 Business Days’ prior Notice, in the event of Force Majeure which materially interferes with such Party’s ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period	The non-Claiming Party may terminate this Agreement on at least <u>twenty (20)</u> Business Days’ prior Notice, in the event of Force Majeure which materially interferes with such Party’s ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period	●		N/A

**Attachment B – Comparison Matrix:
PPA Changes Proposed by Solar Alliance & Recurrent**

PPA §	SCE Language	Proposed Change	SA	R	Recurrent Reason
10	At the end of the Term, SCE, in its sole discretion, shall have the option (the “Buyout Option”) ...	[Delete section and all subsections]	●	●	SCE proposed Buyout Option jeopardizes project financing via ITC monetization; is not required by other PPAs; undervalues projects; & undermines fair comparison of PPA & UOG projects.
Now 12.2 formerly §13.2	Producer shall promptly provide to SCE all documents reasonably requested by SCE relating to:	<u>Within thirty days of Buyer’s request, Producer shall provide</u> to SCE all documents reasonably requested by SCE relating to:	●	●	To specify a reasonable time to locate, review, and submit relevant records.
Now 13.1.2 in what was formerly §14	N/A	Notwithstanding the foregoing or any other provision of this Agreement, SCE personnel responsible for, or otherwise involved in any way with, PPA procurements under the utility’s Solar Photovoltaic Program (SPVP) shall not disclose Confidential Information to other SCE employees or contractors responsible for, or otherwise involved in any way with, the utility-owned generation portion of the SPVP, and shall not themselves use such Information for any purpose other than administering or implementing the PPA portion of the SPVP. For purposes of this paragraph, ‘Confidential Information’ is not limited to such information exchanged between the parties on or after the Effective Date, but includes such information conveyed during any part of the PPA procurement process.”		●	Erects a firewall to prohibit exchange of IPP business-sensitive, confidential information between SCE employees & groups involved in PPA & UOG Program segments. Alternatively, Recurrent recommends that this language be included in the Advice Letter approved by the Commission, if that is necessary to cover communications before PPA’s effective date.
Now 14.2.1 formerly §15.2.1	As of the Effective Date and until the Term End Date, Producer (i) does not, and will not convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than SCE, (ii) will not start-up or Operate the Generating Facility per instruction of or for the benefit of any third party, except as required by other Applicable Laws, and (iii) the Generating Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource, as such term is defined in Public Utilities Code Section 399.12 or Section 399.16 (“ERR Requirements”), and (iv) the output delivered to SCE qualifies under the requirements of the California Renewables Portfolio Standard (the “RPS Requirements”)	As of the Effective Date and until the Term End Date, Producer (i) does not, and will not convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than SCE, (ii) will not start-up or Operate the Generating Facility per instruction of or for the benefit of any third party, except as required by other Applicable Laws, and (iii) the Generating Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource, as such term is defined in Public Utilities Code Section 399.12 or Section 399.16 (“ERR Requirements”), and (iv) the output delivered to SCE qualifies under the requirements of the California Renewables Portfolio Standard (the “RPS Requirements”) <u>in effect as of the Effective Date.</u>		●	Clarifies that the RPS requirements in effect as of the PPA’s Effective Date will apply.
Now 15.4 formerly §16.4	During the entire period that the Generating Facility no longer complies with the ERR Requirements or the RPS Requirements, SCE will not be obligated to pay Producer for the Product.	<u>Subject to Section 15.5,</u> during the entire period that the Generating Facility no longer complies with the ERR Requirements or the RPS Requirements, SCE will not be obligated to pay Producer for the Product.	●	●	Clarification to make 15.4 consistent with 15.5.

**Attachment B – Comparison Matrix:
PPA Changes Proposed by Solar Alliance & Recurrent**

PPA §	SCE Language	Proposed Change	SA	R	Recurrent Reason
Now 15.5 formerly §16.5	Notwithstanding anything to the contrary contained in this Agreement, if there is a change in Applicable Law that results in the Producer no longer meeting the ERR Requirements or RPS Requirements, SCE shall continue to pay Producer for the Product so long as SCE determines that Producer has used, and will continue to use, commercially reasonable efforts to comply with such change in Applicable Law	Notwithstanding anything to the contrary contained in this Agreement, if there is a change in Applicable Law that results in the Producer no longer meeting <u>requirements related to WREGIS or PIRP, or</u> ERR Requirements, RPS Requirements, <u>or any other regulatory compliance requirement under this Agreement</u> , SCE shall continue to pay Producer for the Product so long as SCE determines that Producer has used, and will continue to use, commercially reasonable efforts to comply with such change in Applicable Law, <u>provided however that that Producer shall not be obligated to incur costs in excess of the Compliance Cost Cap in connection with any such compliance undertaking</u> .	●	●	Implement a cap for costs due to unforeseen regulatory changes, and explicitly identify other relevant regulatory requirements.
Now 18 formerly §19	Producer may not assign this Agreement or its rights or obligations under this Agreement without SCE's prior written consent, which consent will not be unreasonably withheld. Any assignment of this Agreement by a Producer without SCE's written consent is not valid.	<u>Neither Party may assign</u> this Agreement or its rights or obligations under this Agreement without <u>the other Party's</u> prior written consent, which consent <u>shall</u> not be unreasonably withheld, <u>provided, however, that Producer may assign, transfer, sell, pledge or encumber this Agreement or the accounts, revenues, or proceeds hereof to its financing providers</u> . Any assignment of this Agreement by <u>a Party</u> without <u>the other Party's</u> written consent <u>shall be void and unenforceable</u> .	●	●	Allows for assignment of revenue to debt-holders, as may be required for project financing.
Defs	"Buyout Option" has the meaning set forth in Section 10.1.	Strike the definition	●	●	Strike the definition as Recurrent proposes to strike Section 10.
Defs	N/A	"Compliance Costs" means all reasonable out-of-pocket costs and expenses incurred by Producer and paid directly to third parties in connection with any change in Applicable Law, including registration fees, volumetric fees, license renewal fees, external consultant fees necessary for compliance.	●	●	Define 'compliance costs' & 'compliance cost cap' for purposes of implementing a cap for costs due to unforeseen regulatory changes
Defs	N/A	"Compliance Costs Cap" has the meaning set forth in Section 2.8	●	●	
Defs	"Force Majeure" means . . . Force Majeure does not include: (i) a failure of performance of any other Person, including any individual or entity providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as Force Majeure; (ii) failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility; (iii) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as Force Majeure); or (iv) a lack of solar radiation	"Force Majeure" means . . . Force Majeure does not include: (i) a failure of performance of any other Person, including any individual or entity providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as Force Majeure; (ii) failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility; (iii) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as Force Majeure); or (iv) a lack of solar radiation, <u>except to the extent that such lack of radiation was caused by an event that would otherwise qualify as Force Majeure</u> . <u>Notwithstanding the foregoing, failure to obtain any Permits timely and properly applied for may qualify as Force Majeure</u> .	●	●	Clarify certain aspects of Force Majeure, including radiation loss from a Force Majeure event or failure to obtain certain permits.

A.08-03-015
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